STATE OF MICHIGAN

COURT OF APPEALS

PAUL DEBROW,

Plaintiff-Appellant,

v

CENTURY 21 GREAT LAKES INC, a Michigan corporation, CENTURY FRANCHISE ASSOCIATION, a foreign corporation, and KATHY MILLER,

Defendants-Appellees.

UNPUBLISHED
April 13, 1999

No. 161048
Oakland Circuit Court
LC No. 91-420886 CK

Before: Kelly, P.J., and Gribbs and Hoekstra, JJ.[1]

PER CURIAM.

This matter is on remand from the Supreme Court. Originally, the trial court granted defendant Century 21 Great Lakes' motion for summary disposition on plaintiff's claims of age and handicap discrimination, breach of employment contract and intentional infliction of emotional distress. The trial court also granted defendants Century 21 Franchise Association and Kathy Miller's motions for summary disposition on plaintiff's claims of conspiracy to commit age and handicap discrimination, tortious interference with a business expectancy and intentional infliction of emotional distress. This Court, in an unpublished, per curiam opinion, affirmed the trial court's order granting defendants' motions for summary disposition. *DeBrow v Century 21 Great Lakes Inc*, unpublished opinion per curiam of the Court of Appeals, issued 8/13/96 (Docket No. 161048). Plaintiff then filed an application for leave to appeal with the Michigan Supreme Court. The Supreme Court, in lieu of granting plaintiff's application for leave to appeal, remanded this case to this Court for reconsideration in light of *Lytle v Malady (On Rehearing)*, 458 Mich 153; 579 NW2d 906 (1998).

On reconsideration, we hold that the *Lytle* decision does not alter our prior resolution of the dispute before us. With regard to the breach of employment contract claim, the Court in *Lytle* found that the verbal assurances made to the plaintiff by her supervisor regarding job security were neither clear nor unequivocal and that the plaintiff had failed to raise a triable issue with respect to whether she had just-cause employment with the defendant. *Lytle, supra*, 458 Mich 171-172. Although the

statements made by plaintiff's supervisor in the instant case were somewhat stronger than those made in *Lytle*, we do not believe that, considering all relevant circumstances, those statements amounted to clear and unequivocal assurances of just-cause employment. *Id.* Even if they did, plaintiff admitted that his failure to do "a good job" would constitute good cause for discharge and that good cause for discharge was left to his employer's subjective discretion. Under these circumstances, we lack authority to second-guess the employer's determination that just cause existed to terminate plaintiff. See *Thomas v John Deere Corp*, 205 Mich App 91, 85; 517 NW2d 265 (1994).

With regard to the age discrimination claim, there was no dispute in *Lytle* that the plaintiff had established a prima facie case of age discrimination. *Lytle, supra*, 458 Mich 177. Moreover, "neither party contest[ed] that the employer was conducting a bona fide [reduction in work force] when it terminated [the] plaintiff so as to effectively rebut the presumption of discrimination." *Id.* The contested issue in the *Lytle* case was whether the reduction in work force explanation "was a mere pretext for discriminatory animus in eliminating [the] plaintiff's position." *Lytle, supra*, 458 Mich 177-178. Because the issue involved in the instant case was whether plaintiff had established a prima facie case of age discrimination and because this case does not involve a reduction in work force claim, the *Lytle* case is distinguishable and the analysis contained therein does not alter our previous resolution of plaintiff's claim that the trial court erred in granting summary disposition on his age discrimination claim.

Affirmed.

/s/ Michael J. Kelly
/s/ Roman S. Gribbs
/s/ Joel P. Hoekstra

[1] Judge Gribbs has been substituted for Justice Young who has been elevated to the Supreme Court and Judge Hoekstra has been substituted for the Circuit Court Judge, Judge Holowka.